In the High Court of Punjab and Haryana at Chandigarh

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C.W.P.No.13245 of 2006
Date of decision:5.9.2006

Amar Nath ..Petitioner

Versus

State of Punjab and others ..Respondents

Coram: **Hon'ble Mr.Justice J.S.Khehar**
Hon'ble Mr.Justice S.D.Anand

Present: Mr. Vinod Bhardwaj,Advocate
for the petitioner.

J.S.Khehar,J.(Oral)

Through the instant writ petition, the petitioner has impugned the order dated 13.12.2005 by which the competent authority has sanctioned the grant of Proficiency step-up on completion of 24 years of service to the petitioner with effect from 1.1.1998. The contention of the learned counsel for the petitioner is that the petitioner had completed 24 years of service and was entitled to the said benefit of proficiency step up w. e. f. 1.1.1996. In so far as the instant grievance of the petitioner is concerned, perusal of the order dated 21.3.2001(Annexure P-2) reveals that the petitioner was denied the benefit of proficiency step up on completion of 24 years of service w. e. f. 1.1.1996 on account of the fact that his over all service record could not be adjudged as good. This determination was rendered by the authorities on the basis of a communication dated 10.1.2000. The communication dated 10.1.2000 has been placed on the record as Annexure P-5.

In order to controvert the determination at the hands of the respondent in relying upon policy instructions dated 10.1.2000(Annexure P-5), learned counsel for the petitioner vehemently contends that the issue in hand pertains to the suitability of the petitioner for being granted proficiency step up w.e.f. 1.1.1996, and that, for the said purpose, reliance could not have be placed

on an instruction which was issued subsequent to the relevant date,i.e.,1.1.1996.

We have considered the aforesaid contention of the learned counsel for the petitioner. It is not possible for us to accept the same in so far as the policy instruction dated 10.1.2000 is concerned. A relevant portion of the aforesaid instruction is being extracted hereunder:-

> "This matter has been considered in consultation with the Department of Finance and it is clarified that one term overall service record is adjudged as 'Good' will be that 50% reports should be 'Good' and above; including at least two of the last three reports. The rest of the reports may be satisfactory/average."

In our view the instruction dated 10.1.2000 is merely clarificatory in nature and therefore must be deemed to relate back to the date when the original instructions were issued. On the issue in hand, reference can be made to the decision rendered by the Apex Court in **S.S.Grewal Versus State of Punjab and others**, AIR 1994 S.C.1232, wherein the Supreme Court observes as under:-

> "From a perusal of the letter dated April 8,1980, we find that it gives clarifications on certain doubts that had been created by some Departments in the matter of implementation of the instructions contained in the earlier letter dated May 5,1975. Since the said letter dated April 8,1980 is only clarificatory in nature, there is no question of its having an operation independent of the instructions contained in the letter dated May 5,1975 and the clarifications contained in the letter dated April 8,1980 have to be read as a part of the instructions contained in the earlier letter dated May 5, 1975. In this context it may be stated that according to the principles of statutory construction in a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See: Craies on Statute Law, 7th Ed. p.58). It must, therefore, be held that all appointments against vacancies reserved for Scheduled Caste made after May 5,1975 (after May 14,1977 in

so far as the Service is concerned), have to be made in accordance with the instructions as contained in the letter dated May 5,1975 as clarified by letter dated April 8,1980."

It is therefore, apparent that the policy instructions dated 10.1.2000 will relate back to the date when the original instructions were issued, on the basis of which, the petitioner is presently claiming proficiency step up. Thus, it is wholly a futile effort for the petitioner to impugn the action of the respondents on the basis of the plea noticed herein above.

It would also be pertinent to mention that the petitioner does not controvert the conclusion that the petitioner did not possess the bench mark expression (in paragraph 2 of the policy instruction dated 10.1.2000,extracted herein above). It is therefore, not possible for us to accept the claim of the petitioner for the grant of proficiency step up w.e.f. 1.1.1996 as the petitioners record was such that the same could not have been granted to him.

Dismissed.

(J.S.KHEHAR)
JUDGE

September 5,2006
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(S.D.ANAND)
JUDGE